Supreme Court, U.S.
FILED

10-9 - APR 26 2010

No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

Chris E. Bankston

&

Diane R. Bankston, *Petitioners*

v.

United States, Defendant, (*Respondeat Superior*)

&

Internal Revenue Service, Defendant *Respondents*

On Petition for Writ of Certiorari
To the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Chris E. & Diane R. Bankston
In propia persona
2395 Redwood Avenue
Lafayette, Co. 80026
(720) 257– 4194

Questions Presented for Review

1. The decision of the Tenth Circuit Court of Appeals in this case, *Bankston* v. *United States* and *IRS.*, docket #09-1258, was the direct opposite of the findings regarding subject matter jurisdiction and due process in the En Banc ruling in, *Schulz* v. *IRS.*, 395 F.3d and the rehearing in *Schulz* v. *IRS.*, 413 F.3d 297 in 2005 from the Second Circuit Court of Appeals. The Second Circuit Court of Appeals ruled that any scheme by the IRS which bypasses an adversarial hearing, denies due process of the Fifth and § 1 of the Fourteenth amendments. The Tenth *Circuits* three judges who denied the appeal on *Bankston* v. *United States* and *IRS* id for lack of subject matter jurisdiction, disregarded the briefs on the Second Circuit Court of Appeal ruling. The Petitoners petitioned for an En Banc hearing or

Certification to the Supreme Court on the direct conflict in rulings as the central issue, was also denied by the Tenth Circuit Court of Appeals. The question, in accordance with Rule 10 (a), (c), is for the Supreme Court to decide, which prevails; the Second Circuit Court of Appeals En Banc ruling on Constitutional grounds of lack of adversarial hearings and Due Process of the Fifth and §1 of the Fourteenth amendment in a scheme that deprives one of inalienable rights or causes injury; or the Tenth Circuit Court of Appeals decision of lack of subject matter jurisdiction as grounds for denial of hearing the evidence and the merits of the case on a taking of property (injury) without adversarial hearing?

2. The Federal Court system is the Judicial branch of government enumerated in the Constitution, as one the three powers of Federal Government. By de-

sign, usage and tradition, the Judicial branch is the premiere and foremost avenue of resolving the First Amendment inalienable right of Redress of Grievance. All judges are sworn to uphold the Constitution and the inalienable rights of the people on an individual basis. Therefore, one of the questions for the Supreme Court to review and answer in this case, in accordance with Rule 10 (a), (c), is: does the Colorado Federal District Court and Tenth Circuit Court of Appeals have the Constitutional and lawful authority to deny hearing the evidence and the merits of this case, since it is a Redress of Grievance as stated in the caption of the initial filing in Colorado Federal District Court?

3. Given the violation of several Constitutional inalienable rights, the violation of Federal law and state law, with subsequent monetary injuries, great humiliation, embarrassment, and mental suffering,

do the Petitioners, under Rule 10 (a), (c), have the right to remedy through the courts, in light of the Seventh Amendment and the Supreme Court ruling in *Marbury* v. *Madison*., 5 U.S. 137; 2L. Ed. 60; (1803)?

4. In accordance with Rule 10 (a), (c), is Title 42 § 1983 applicable as subject matter jurisdiction in this case, to the Colorado Federal District Court and the 10th Circuit Court of Appeals, and the Federal government and its entities such as the IRS, as held by the Supreme Court in *Mitchum* v. *Foster*., 407 U.S. 225 (1972) that a showing of bad faith by a government would call for equitable relief under U.S.C. 42 § 1983. This question is crucial since the Supreme Court noted in *Butz* v. *Economu*., 438 U.S. 478 (1978) that "other circuits have also concluded that the Supreme Courts development of official immunity doctrine id § 1983 suits against state

officials applies with equal force to federal officials sued on a cause of action directly from the Constitution....." ?

5. In accordance with rule 10 (c), does subject matter jurisdiction apply in this case and to the Colorado Federal District Court and the 10th Circuit Court of Appeals since in *Davis* v. *Passman* 442 U.S. 228 (1979) the Supreme Court held that a Constitutional violation of the Fifth Amendment alone, is reason for a Federal District court to hear the case?

6. Accounting for the Colorado Federal District courts responsibility in the Federal Rules of Civil Procedure, Rule # 1, and in accordance with Rule 10 (a); does the Colorado Federal District Court and the 10th Circuit Court of Appeals have the authority to break contract with the Petitioners, by dismissing the case prior to hearing the evidence?

Parties

(a) Petitioner: Chris Edwin Bankston
2395 Redwood Ave.
Lafayette, Colorado 80026

(b) Petitioner: Diane Rich Bankston
2395 Redwood Ave.
Lafayette, Colorado 80026

(c) Defendant & Respondeat Superior:
Solicitor General of the United States,
Room 5614, Department of Justice, 950 Pennsyl
vania Ave., N.W. Washington, DC 20530-0001

(d) Defendant: Internal Revenue Service
1999 Broadway
Denver, Colorado 80202

Coporate disclosure statement:

There is no parent or publicly held company involved in this case.

TABLE OF CONTENTS

Pg 1-5 Questions Presented for Review

Pg 6 Parties

Pg 7-8 Table of Contents

Pg 9-11 Table of Authorities

Pg 12 Jurisdiction

Pg 13 Constitutional Provisions, Federal Statutes and Regulations involved in the case

Pg 14-18 Statement of the case in relation to the Questions Presented for Review and reasons relied on for the allowance of the writ

Pg 19 Federal jurisdiction in the court of first instance

Pg 20-45 Argument amplifying the the reasons relied on for allowance of the writ

Pg 46-115 Appendix:

Pg 47-50 10th Circuit Orders & Judgement

Pg 51– 52 10th Circuit Order

Table of Contents
(cont.)

Pg 53-81 Colorado District Court Recommendation

Pg 82-104 Colorado District Court Order

Pg 105- -108 Colorado District Court Judgement

Pg 109 First and Fourth Amendments to the Con stitution of the United States of America

Pg 110 Fifth Amendment to the Constitution of the United States of America

Pg 110 - 111 Seventh Amendment to the Constitu tion of the United States of America

Pg 111-112 §'s 1 and 5 of the Fourteenth Amend ment to the Constitution of the United States of America

Pg 112-113 U.S.C. 42 § 1983

Pg 113 U.S.C. 28 § 1356

Pg 114 Federal Rules of Civil Procedure # 1

Pg 114 –115 Colorado Revised Statute 18-5-110

TABLE OF AUTHORITIES

1. First Amendment to the Constitution of the United States of America

Pages: 3, 14, 15, 16, 109

2. Fourth Amendment to the Constitution of the United States of America

Pages: 15, 15, 109

3. Fifth Amendment to the Constitution of the United States of America

Pages: 14, 24, 110

4. Seventh Amendment to the Constitution of the United States of America

Pages: 15, 16, 110, 111

5. §1 and § 5 of the Fourteenth Amendment to the Constitution of the United States of America

Pages: 15, 16, 24, 111, 112

6. U.S.C. 42 §1983

Pages: 4, 12, 13, 15, 19, 30, 34, 112, 113

TABLE OF AUTHORITIES
(cont)

7. U.S.C. 28 §1356

Pages: 12, 13, 19, 114, 115

8. Federal Rules of Civil Procedure # 1

Pages: 5, 17, 18, 55

9. *Bolling* v. *Sharpe.*, 347 U.S. 497 (1954)

Pages: 29

10. *Bankston* v. *United States* & *IRS.*, docket # 09-

1258 Tenth Circuit Court of Appeals

Pages: 1, 14

11. *Bell* v. *Hood.*, 327 U.S. 678 (1946)

Pages: 17, 39

12. *Butz* v. Economu., 438 U.S. 478 (1978)

Pages: 4, 15, 33

13. *Davis* v. *Passman.*, 442 U.S. 228 (1979)

Pages: 5, 15, 35

TABLE OF AUTHORITIES
(cont)

14. *Haines* v. *Kerner*., 404 U.S. 519 (1972)

Pages: 17, 43

15. *Marbury* v. *Madison*., 5 U.S. 137 (1803)

Pages 4, 15, 31

17. *Mitchum* v. *Foster*., 407 U.S. 225 (1972)

Pages: 4, 15, 32

18. *Scheuer* v.*Rhodes*., 416 U.S. 232 (1974)

Pages: 17, 38

19. *Schulz* v. *IRS*., 395 F.3d 463 (2005)

Pages: 1, 14, 20, 21, 22, 23, 24, 25, 27, 28

20. *Schulz* v. *IRS*., 413 F.3d 297 (2005) rehearing

21. Colorado Revised Statutes 18-5-110

Criminal Simulation

Page: 114, 115

JURISDICTION

1. The dates of the orders entered to be reviewed are December 17, 2009 for the initial order, and January 26, 2010 for the rehearing order.

2. Statutory Provisions believed to confer on the Supreme Court jurisdiction to review on a writ of certiororai the judgement or order in question;

(a) U.S.C. 42 § 1983 see appendix Pg 112, 113

(b) U.S.C. 28 § 1356 see appendix Pg 113

The Constitutional Provisions, Federal Statutes and Regulations involved in the case

(1) First Amendment to the Constitution of the United States of America see appendix Pg 109

(2) Fourth Amendment to the Constitution of the United States of America see appendix Pg 109

(3) Fifth Amendment to the Constitution of the United States of America see appendix Pg 110

(4) Seventh Amendment to the Constitution of the United States of America see appendix Pg 110

(5) §'s 1 and 5 of the Fourteenth Amendment to the Constitution of the United States of America see appendix Pg 111

(6) U.S.C. 42 § 1983 see appendix Pg 112, 113

(7) U.S.C. 28 § 1356 see appendix Pg 113

(8) Federal Rules of Civil Procedure # 1 see appendix Pg 114

Statement of the Case in relation to Questions Presented for Review

Question #1: The Tenth Circuit denied to hear the appeal of *Bankston* v. *United States* and *IRS* 08-cv-02233-WYD-MEH from the Colorado District Court for lack of subject matter jurisdiction. This was in direct opposition to *Schulz* v. *IRS* 395., F.3d and the rehearing in *Schulz* v. *IRS.*, 413 F.3d 297 in 2005 who ruled that any scheme by the IRS which bypasses an adversarial hearing denies due process of the Fifth and § 1 of the Fourteenth Amendments.

Question # 2: All judges are sworn to support and defend the Constitution by Constitutional mandate to hold their office. The Federal District Court and the Tenth Circuit Court of Appeals denied an inalienable right of the Constitution by denying hear ing the evidence and merits of Redress of Grievance, which was claimed in the caption of the initial

Statement of the Case in relation to Questions Presented for Review (cont.)

filing in the Colorado Federal District Court.

Question # 3: In *Marbury* v. *Madison*., 5 U.S. 137, The Supreme Court held that " where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." The inalienable rights of the First, Fourth Fifth, Sev enth and §'s 1 and 5 of the Fourteenth Amendment were violated by the defendants, therefore, the legal remedy by suit is indisputable.

Question # 4: U.S.C. 42 § 1983 has evolved to include Federal officials. In *Mitchum* v. *Foster* 407 U.S. 225 (1972) the Supreme Court said: that a showing of bad faith by a government would call for equitable relief under U.S.C. 42 § 1983. In *Butz* v. *Economou*., 438 U.S. 478 (1978) the Supreme Court held: "other circuits have also con-

cluded that the Supreme Courts development of official immunity doctrine id § 1983 suits against state officials applies with equal force to federal official sued on a cause of action directly from the Constitution.....", therefore, U.S.C. 42 §1983 is applicable as statutory subject matter jurisdiction in this case.

Question # 5: In *Davis* v. *Passman* 442 U.S. 228 (1979) the Supreme Court held that a violation of the Fifth Amendment alone is cause and reason for a Federal District Court to hear the case. Therefore, since due process and equal protection of the law under the Fifth Amendment is part of the Redress of Grievance in the initial case, subject matter jurisdiction on the Fifth Amendment alone is reason for the case to be heard on the evidence and merits. Both courts should have realized this.

Statement of the Case in relation to Questions Presented for Review (cont.)

Question # 6: The Federal Rules of Civil Procedure #1 ensures that upon payment of the docket fee a contract is formed between the courts and the Peti tioners. The Federal District Court is to administer the just and speedy determination of every act and proceeding. Rule # 1, combined with the Supreme Court decisions in *Schuer* v. *Rhodes.*, 416 U.S. 232, *Bell* v. *Hood.*, 327 U.S. 678, and *Haines* v. *Kerner.*, 404 U.S. 519 the Petitoner is obviously entitled to offer proof and the court is duty bound to protect that claim of either Constitutional injury, monetary injury, or injury by violation of federal law. Further, that jurisdiction is not a reason for dismissal. Dis missal is possible only on the merits of the case that are heard in evidence. Therefore the District and Circuit courts wrongfully dismissed the cases,

Statement of the Case in relation to Questions Presented for Review (cont.)

breaking the contract both monetarily and with unceptable jurisprudence that does not conform with the Scope and purpose of the Federal Rules of Civil Procedure.

Federal jurisdiction in the court of first instance

(1) U.S.C. 42 § 1983 see appendix Pg 112, 113

(2) U.S.C. 28 § 1356 see appendix Pg 113

Argument amplifying the reasons relied on for allowance of the writ

In *Schulz* v. *IRS.*, 395 F.3d 463 (*Schulz* I) and *Schulz* v. *IRS.*, 413 F.3d 297 (*Schulz* II) The Second Circuit Court of Appeals held in *Schulz* I at 464 that;

"It is well-established that "Article III of the Constitution confines the jurisdiction of the federal courts to actual "Cases and Controversies" To demonstrate the standing necessary to invoke the jurisdiction of the federal courts, a plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be re dressed by the requested relief. *Allen* v. *Wright*, 468 U.S. 737 751. This injury may not be speculative or abstract, but must be distinct and definite.'

In *Schulz* I id, the Second Circuit court held, at 465:

"absent an effort to seek enforcement through a federal court, IRS summonses apply no force to

taxpayer who refuses, ignores or otherwise does not comply with an IRS summons until the summons is backed by a federal court order. In addition, we hold that if the IRS seeks enforcement of a sum mons through the courts, those subject to the pro posed order must be given a reasonable opportunity to contest the government's request. If a court grants a government request for an order of enforce ment then we hold consistent with 26 U.S.C. § 7604 and *Reisman,* that any individual subject to that order must be give a reasonable opportunity to com ply and cannot be held in contempt, arrested or de tained, or other wise punished for refusing to com ply with the original IRS summons, no matter the taxpayers reasons or lack of reasons for so refus- ing."

In *Schulz* II id in the BACKGROUND section after Schulz I id was issued, the 2nd Circuit Court of Ap peals states at 300;

"The government's principal concerns are

that we misunderstand the nature of jurisdictional bar on motions to quash IRS summonses and "misapprehend the consequences that ensue from the issuance of an administrative summons." As to the latter point, that the government appears to ar gue alternatively, or in combination, that: 1) the government may use the federal courts to punish taxpayer who disobey an IRS summons even if the summons is never enforced by a court order; 2) if an IRS summons is enforced by a court order, the court may punish disobedience of the IRS summons be fore providing the taxpayer and opportunity to com ply with the court's order; or 3) If an IRS summons is enforced by a court order, the court may punish disobedience of the IRS summons even if the tax payer complies with the court's order. In our view,

expressed in *Schulz* I consistent with the comprehensive tax-enforcement scheme in which 26 U.S.C. Sections 7210, 7604 (a), and 7604 (b) are situated, constitutional due process, or the relevant precedents of this Court and the United States Supreme Court."

Schulz II id continues on under DISCUSSION at 300:

"Because it was the focus of the parties, our dis cussion in *Schulz I* focused primarily on the doc trinal rules of jurisdiction that the Supreme Court has derived from the "Cases" and "Controversies" clauses of the United States Constitution, Article III, Section 2. *See Reisman,* 375 U.S. at 443 (dismissing petition to quash "for want of eq uity"). Underlying our analysis there was the equally venerable line of Supreme Court doctrine

Argument amplifying the reason relied on for allowance of writ (cont.)

limiting the protections afforded to administrative action by sovereign immunity based on the due process clauses of the Fifth and Fourteenth Amend ments to the United States Constitution."

The 2nd Circuit Court of Appeals in *Schulz II* at 301 states:

" Our view of the constitutional issues impli cated these sections of the tax enforcement scheme and the conflicts posed by the governments "Draconianism" is the same now as it was then. Reading 26 U.S.C. §§ 7210 and 7604 to allow the imposition of penal consequences for failure to comply with an IRS summons render the sections unconstitutional unless the summoned taxpayer has an opportunity to seek judicial review of the summons *before* placing the taxpayer at the

Argument amplifyng the reasons relied on for allowance of writ (cont.)

risk of punishment"

Further, on judicial review at 302 the Second Circuit states:

"

See United States v. *Euge,* 444 U.S. 707,719 (1980) ("[T]he summoned party is entitled to challenge the issuance of the summons in adversary proceeding in federal court *prior to enforcement* and may assert appropriate defenses (emphasis added)); *Donaldson* v. *United States*, 400 U.S. 517, 525 (1971) ("Thus the [IRS] summons is administratively issued but its enforcement is only by federal court authority in an adversary proceeding affording *complete protect tion* to the witness."

Schulz I and *Schulz II* id are specifically addressed to the IRS and its lack of due process regarding the Fifth and Fourteenth Amendments to the

Argument amplifying the reasons relied on for allowance of the writ (cont.)

Constitution of the United States of America to IRS summonses. However, the circuit court, expands it ruling on the IRS, to any administrative policy that results in seizure, confiscation, or taking.

In *Schulz II* id at 303 the 2nd Circuit Court of Appeals held:

"The rule of due process which we relied on in *Schulz I*, and upon which we rely now, can be stated thus: any legislative scheme that denies subjects an opportunity to seek judicial review of administrative order except by refusing to comply, and so put themselves in immediate jeopardy of possible penalties " so heavy as to prohibit resort to that remedy," Oklahoma Operating Co. v. Love, 252 U.S. 331,333 (1920), runs afoul of the due process requirements

Arguments amplifying the reasons relied on-for allowance of the writ (cont.)

of the Fifth and Fourteenth Amendments."

It is obvious, that the IRS administrative policy of levies does not provide for judicial review (due process) prior to the seizure."

Obviously, the major difference between summons in *Schulz I & II* id and this civil action is that in *Schulz I & II* id, there is now access to judicial re view regarding an IRS summons prior to the IRS summons being enforced by a federal court order, which has never been available under the IRS levy procedure, as is evidenced by the IRS procedures used against the Petitioners. Thus, the violation of due process clauses in the Fifth Amendment and Section 1 of the Fourteenth amendment to the Con stitution of the United States of America. There fore, by custom and policy, the IRS then illegally

Argument amplifying the reasons relied on for allowance of the writ (cont.)

seized the Petitioners property/liberty in violation of the Fourth Amendment to the Constitu tion of the United States of America.

Any legislative scheme, are key words in this precedent setting, superceding decision. The word any, is defined by Webster's third International dictionary as "indiscriminately of whatever quantity". The American Heritage Dictionary defines all as "every or all, without specification." The word scheme in Black's Law Dictionary has two meanings, both of which apply to the IRS levy procedure in this civil action. 1. A systemic plan; a connected or orderly arrangement, esp of related concepts. 2. An artful plot or plan. usu. To deceive others.

Argument amplifyiing the reasons relied on for allowance of the writ

Regarding Question 2. There is supposed to be a scope of protection from the courts regarding individual constitutional rights that is guarded by a judges oath to the constitution. In *Bolling v. Sharpe* 347 U.S. 497 ; 74 S. Ct. 693 in 1954, the Supreme Court held in paragraph 2 that :

"The Fifth Amendment, which is applicable in the District of Columbia , does not contain an equal pro tection clause as does the Fourteenth Amendment which applies only to the states. But the concepts of fairness, are not mutually exclusive. The "equal protection of the laws" is a more explicit safeguard of prohibited unfairness than "due process of law,"and, therefore, we do not imply that the two are always interchangealbe phrases. But as this Court has recognized, discrimination may be so

unjustifiable as to be violative of due process."

U.S.C. 42 § 1983 now applys to federal officers. A federal judge is a federal officer, and is in an immi nent position to deny equal protection under the law as the Federal Courts did to the Petitioners who we re under the Scope of the Courts protection, just as those minority segregated children in the above 1954 case. This scope of protection is Constitutional and by a judges oath, is an umbrella of Constitutio nal protection that covers the Petititioners and to all who come to the Federal Courts for a Redress of grievances,or violations of other inalienable Consti tutional rights. Therefore, the courts responsibility is to the individuals under the Constitution to see that those rights that are violated are remedied upon complaint.

Argument amplifying the reasons relied on for allowance of the writ

Regarding question # 3, *Marbury* v. *Madison.*, 5 U.S. 137.,(1803). The opinion was written by Chief Justice Marshall and is a foundational case to this day in American jurisprudence. At 163 the Supreme Court held:

"The very essence of civil liberty consists in the right every individual to claim the protection of the laws whenever, he receives an injury. One of the first duties of government is to afford that protect tion. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgement of his court.. In 3d vol. of his commentaries, p. 23 Blackstone states two cases in which remedy is afforded by mere op eration of law. "In all other cases," he says "it is a general and indisputable rule that where there is a

Argument amplifyiing the reasons relied on for allowance of the writ (cont.)

legal right, there is a legal remedy by suit or action at law, whenever that right is invaded."

At 178 the Supreme Court held:

"The judicial power of the United States is extended to all cases arising under the constitution.

In regards to question # 4, The Supreme Court in *Mitchum* v. *Foster 407 U.S. 225*, at 242 in 1972 held:

"Section 1983 was thus a product of a vast trans formation from the concepts of federalism that had prevailed in the late 18th century when the anti-junction statute was enacted. The very purpose of § 1983 was to interpose the federal courts between the states and the people, as guardians of the peo ple's federal rights—to protect the people from un constitutional action under the color of state law

Argument amplifying the reasons relied on for allowance of the writ (cont.)

"whether that action be executive , legislative or ju dicial." *Ex parte Virginia,* 100 U.S., at 346. In car rying out that purpose, Congress plainly authorized federal courts to issue injunction in § 1983 actions, by expressly authorizing a "suit in equity" as one of the means of redress."

The Supreme Court in *Butz* v. *Economou* 438 U. S. 478 at 484 in 1979 held that:

"The Court of Appeals for the Second Circuit re versed the District Court's judgment of dismissal with respect to the individual defendants. *Econo mou* v. *U.S. Department of Agriculture*, 535 F.2d 688 (1976). The Court of Appeals reasoned that *Barr* v. *Matteo, supra*, did not "represent the last word in this evolving area"535 F.2d at 691, because principles governing the immunity of officials

Argument amplifying the reasons relied on for allowance of the writ (cont.)

of the Executive Branch had been elucidated in later decisions dealing with constitutional claims against state officials. *E. g., Pierson* v. *Ray*, 386 U.S. 547 (1967); *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974); *Wood* v. *Strickland*, 420 U.S. 308 (1975). These opinions were understood to establish that officials of the Executive Branch exercising discre tionary functions did not need the protection of an absolute immunity from suit, but only a qualified immunity based on good faith and reasonable grounds. The Court of Appeals rejected a proposed distinction between suits against state officials sued pursuant to 42 U. S. C. § 1983 and suits against fed eral officials under the Constitution, noting that "other circuits have also concluded that the Su preme Court's development of official immunity

Argument amplifying the reasons relied on for allowance of the writ (cont.)

doctrine in § 1983 suits against state officials applies with equal force to federal officers sued on a cause of action derived directly from the Constitution, since both types of suits serve the same function of protecting citizens against violations of their constitutional rights by government officials."

Thusly, from 1972 through 1978, the Supreme Court and the appellate courts recognized that 42 U.S.C. § 1983 applies to federal officials and agencies, therefore, 42 U.S.C. § 1983 qualifies as subject matter jurisdiction when the federal government and its entities, when they violate inalienable constitutional rights held by the people.

In regards to Question 5, in *Davis* v. *Passman.*, 442 U.S. 228 at 234 in 1979 the Supreme Court held:

"In *Bivens* v. *Six unknown Fed. Narcotics Agents,*

federal agents had allegedly arrested and searched Bivens without probable cause, thereby subjecting him to great humiliation, embarrassment, and men tal suffering. *Bivens* held the fourth amendment guarantee against "unreasonable searches and sei zures" was a constitutional right which Bivens could enforce through a private course of action, and that a damages remedy was an appropriate form of re dress. Last Term, *Butz* v. *Economou*, 438 U.S. 478 (1978), reaffirmed this holding, stating that the de cision in *Bivens* established that a citizen suffering a compensable injury to a constitutionally protected interest could invoke the general federal question jurisdiction of the district courts to obtain an award of monetary damages against the responsible fed eral official. *Id* ., at 504. Today we hold that *Bivens*

Argument amplifying the reasons relied on for allowance of the writ (cont.)

and *Butz* require reversal of the holding of the en banc Court of Appeals. Our inquiry proceeds in three stages. We hold first that pretermitting the question whether respondent's conduct is shielded by the Speech or Debate Clause, petitioner asserts a asserts a constitutionally protected right; second, the petitioner has stated a cause of action which as serts this right; and third, that relief damages con stitutes an appropriate form of remedy. "The Fifth Amendment provides that "[no] person shall be... deprived of life, liberty, or property, without due process of law...." " "In numerous decisions this court "has held that the Due Process Clause of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws. E. g. *Hampton* v. *MowSun Wong*, 426 U.S. 88, 100 (1976); *Buckley*

Argument amplifying the reasons relied on for allowance of the writ (cont.)

v. *Valeo,* 424 U.S. 1,93 (1976); *Weinberger* v. *Wiesenfeld*, 420 U.S. 636, 638 n 2 (1975); *Bolling* v. *Sharpe*, 347 U.S. 497, 500(1954)." *Vance* v. *Brad ley*,440 U.S. 93, 95 n 1 (1979)."

Regarding question # 6, In *Scheuer* v. *Rhodes* 416 U.S 232; 94 S. Ct. 1683 at 236, the Supreme Court held that:

"When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is neces sarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleading that a recovery is very remote and unlikely but that is not the test. Moreover, it is well

established that in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or failure to state a cause of ac tion, the allegations should be construed favorably to the pleader."

In the next paragraph the Supreme Court held: " In appraising the sufficiency of the complaint we fol low, of course that a complaint should not be dis missed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley* v. *Gibson*, 355 U.S. 41 (1957)

In *Bell* v. *Hood* 327 U.S. 678; 66 S. Ct. 773 (1946) the Supreme Court held that:

"Whether or not the complaint as drafted states a common law action in trespass made actionable by

state law, it is clear from the way it was drawn that petitioners seek recovery squarely on the ground that respondents violated the Fourth and Fifth Amendments. It charges that the respondents conspired to do acts prohibited by these amendments and alleges that respondents' conduct pursuant to the conspiracy resulted in damages in excess of $ 3,000. It cannot be doubted therefore that it was the pleaders' purpose to make violation of these constitutional provisions the basis of this suit. Before deciding that there is no jurisdiction, the District Court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States. For to that extent "the party who brings a suit is master to decide what law he will rely upon

and... does determine whether he will bring a 'suit arising under' the [Constitution or laws] of the United States by his declaration or bill." The *Fair* v. *Kohler Die Co.*, 228 U.S. 22, 25. Though the mere failure to set out the federal or constitutional claims as specifically as petitioners have done would not always be conclusive against the party bringing the suit, where the complaint, as here, is so drawn as to seek recovery directly under the Constitution or laws of the United States, the federal court, but for two possible exceptions later noted, must entertain the suit. Thus allegations far less specific than the ones in the complaint before us have been held ade quate to show that the matter in controversy arose under the Constitution of the United States. *Wiley* v. *Sinkler*, 179 U.S. 58, 64-65; *Swafford* v. *Templeton*, 185 U.S. 487, 491-492. The reason for this is that the court must assume jurisdiction to decide whether the allegations state a cause of ac tion on which the court can grant relief as well as to

Argument amplifying the reasons relied on for allowance of the writ (cont.)

determine issues of fact arising in the controversy. "Jurisdiction, therefore, is not defeated as respon dent seem to contend by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as is sues of fact it must be decided after and not before the court has assumed jurisdiction over the contro versy. If the court does later exercise its jurisdic tion to determine that the allegations in the com plaint do not state a ground for relief, then dis missal of the case would be on the merits, not for

Argument amplifying the reasons relied on for allowance of the writ (cont.)

want of Jurisdiction. *Swafford* v. *Templeton,* 185 U.S. 487 ,493, 494; *Binderup* v. *Pathe Exchange,*263 U. S. 291, 305-308 . The previously carved out exceptions are that a suit may sometimes be dis missed for want of jurisdiction where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous The accuracy of calling these dismissals jurisdic tional has been questioned. *The Fair* v.*Kohler., su pra,* 228 U.S. at 25. But cf. *Swafford Swafford* v. *Templeton, supra."*

In *Haines* v. *Kerner* 404 U.S. 519 (1972) the Su preme Court held that:

"allegations such as those asserted by petitioner

however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allega tion of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley* v. *Gibson*., 355 U.S. 41. See *Dioguardi* v. *Durning*, 139 F.2d 774 (CA2 1944). Accordingly, although we intimate no view whatever on the merits of peti tioner's allegation, we conclude that he is entitled to an opportunity to offer proof. The judgment is re versed and the case is remanded for further pro ceedings consistent herewith." Both the Colorado Federal District Court and the Federal Court of Ap

Argument amplifying the reasons relied on for allowance of the writ (cont.)

peals for the Tenth Circuit denied the Petitioners the chance to offer proof of the claims in the com plaint.

Affiants further sayeth naught

Chris E. & Diane R. Bankston
In propia persona
2395 Redwood Avenue
Lafayette, Co. 80026
(720) 257– 4194

APPENDIX

Case: 09-1258 Document: 01018332530 Date filed 12/17/2009 Filed United States Court of Appeals Tenth Circuit December 17, 2009 Elisabeth A. Schumaker Clerk of Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

CHRIS E. BANKSTON ; DIANE R. BANKSTON,	
Plantiffs-Appellants,	No. 09-1258
V.	(D.C. No. 08-CV-02233-WYD-MEH)
INTERAL REVENUE SERVICE,	(D. Colo.)
Defendant-Appellee	

ORDER AND JUDGEMENT *

Before **Lucero, Mckay and Murphy,** Circuit Judges.

After examining the briefs and the appellate record, this panel has determined unanimously to grant the parties request for a decision on the briefs with out oral argument. *See* Fed. R. App. P. 34 (f).

Plaintiffs, Chris and Diane Bankston filed suit against the Internal Revenue Service seeking mone tary damages and injunctive relief based on the IRS's issuance of notice of Levy against Mrs. Bank ston for a total amount of $18, 877.53 in unpaid fed eral taxes. Plantiffs alleged that they are not sub ject to federal income taxes because they are each "domiciled natural person and one

---

* This order and Judgement is not binding precedent, except under the doctrines of law of the case, resjudicata, and collateral estoppels. It may be cited however, for its persuasive value content consistent with Fed. R. App P32.1 and 10th Cir. . 32.1.

of the people." (R. at 12.) The magistrate judge rec ommended denial of their motion for a temporary restraining order based upon inter alia, lack of sub ject matter jurisdiction. The magistrate judge also recommended dismissal of their complaint for lack of subject matter jurisdiction among other reasons. The district court adopted the magistrate judge rec ommendations and dismissed the case.

Nothing in plaintiffs' briefs or the authorities cited therein persuades us that the district court had

subject matter jurisdiction over plaintiff's claims against the IRS and the U. S. Government. For substantially the reasons given by the magistrate judge and the district court, we **AFFIRM** the dis-

trict court's denial of a temporary restraining order and dismissal of the complaint for lack of subject matter jurisdiction.

Entered for the Court

Monroe G. McKay
Circuit Judge

Case: 09-1258 Document:0108355637 Date filed 01/26/2010 Filed United States Court of Appeals Tenth Circuit January 26, 2010 Elisabeth A. Shumaker Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CHRIS E. BANKSTON, et al., Plaintiffs– Appellants, v. Internal Revenue Service, Defendant– Appellee,	No. 09-1258

ORDER

Before **Lucero, Mckay and Murphy,** Circuit Judges.

Case: 09-1258 Document: 0108355637 Date filed 01/26/2010 Filed United States Court of Appeals Tenth Circuit January 26, 2010 Elisabeth A. Shumaker Clerk of Court

Appellant's petition for rehearing is denied

The petition for rehearing en banc was transmit ed to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court re quested that the court be polled, that petition is also denied.

Entered for the Court

"s/" Elisabeth A. Shumaker, Clerk

Case: 1 08-cv-02233-WYD-MEH Document 31 filed

02/12/09 USDC Colorado Page 1 of 10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08– cv-02233-WYD-MEH

CHRIS E. BANKSTON, and
DIANE R. BANKSTON

Plaintiffs,

v.

The United States of America, and
Internal Revenue Service

Defendants.

RECOMMENDATION ON THE UNITED STATES' MOTION TO DISMISS PURSUANT TO RULE 12(b) (1) (2) (5) AND (6)

Pending before the Court is the United States'

Motion to dismiss Pursuant to Rule 12 (b) (1), (2),

(5) and (6) [filed February 11, 2009; docket # 38].

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 1 of 10

The motion has been referred to this court for recommendation [docket # 40]. *See* 28 U.S.C. § 636 (b) (1) (A); D. C. Colo LCivR 72.1C. Oral argument would not materially assist the Court in adjudicating this matter For the reasons set forth below, the court recommends that the United States' Motion to dismiss Pursuant to Rule 12 (b) (1),(2), (5) and (6) be **granted.** 1

1 Be advised that all parties shall have ten (10) days after service and file any written objections in order to obtain reconsideration by the district judge to whom this case is assigned.. Fed.R. Civ. P. 72 The party filing the objections must specifically identify those findings or recommendations to which the objections are being made. The District Court need not consider frivolous, conclusive or general objections. A party's failure to file such written objections to proposed findings and recommendations

Case: 1 08-cv-02233-WYD-MEH Document 31 filed

02/12/09 USDC Colorado Page 1 of 10

contained in this report may bar the party from a de novo determination by the District Judge of the proposed findings and recommendations. *United States* v. *Raddatz*, 447 U.s. 667 676-83 (1980); 28 U. S. C. §636 (b) (1). Additionally, the failure to file written objections to the proposed findings and rec ommendation within ten (10) days after being served with a copy may bar the aggrieved party from appealing the factual findings of the Magis trate Judge that are accepted or adopted by the Dis trict Court. *Thomas* v. *Arn*, 474 U.S. 140, 155 (1985); *Moore* v. *United States, 950 F.2d 656,659 ! 0th Cir. 1991) ; Niehaus* v. Kansas bar Ass'n 793 F.2d

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 2 of 10

Plantiffs filed their Amended Complaint in Feb ruary 6, 2009 (2) (Docket # 37.) In response the gov ernment submitted the Motion to Dismiss presently before the court Plaintiff' Amended Complaint offer no substantive difference from their original Com plaint and reiterates the arguments initially pre sented. Thus the court sees no need to allow further briefing on the Motion to Dismiss before issuing this recommendation.

I. Background

The court incorporated by the background as stated in the January 14, 2009 Recommendation. (Docket #28 at 2-3) The only distinction from the original Complaint discerned in Plaintiffs Amended Complaint is, in addition to the Internal Revenue

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 2 of 10

Service ((IRS"), Plaintiffs name the United States as a defendant. (Docket # 37 at 7.) To briefly sum marize the Amended Complaint, Plaintiffs contend that their "status" as "one of the people" and a 'Natural Person Domiciled' "exempts them from fil ing federal taxes (*Id*. At 10-11) Plaintiff also agaon asserts the Courts jurisdiction pursuant to the First, Fourth, Fifth, Seventh, Thirteenth and Four teenth Amendments of the United States Constitu tion as well as 42 U.S.C § 1983 and 28 U.S.C. §1356. (*Id*_at 9)

---

(2) The court accepts Plaintiffs' Amended Complaint submitted pursuant to Fed. R. Civ. P. 1 (a) (1).

(3) Additionally, Fed R. Civ. P. 12 (h) (3) requires that "if the court determines at any time that it

Case: 1 08-cv-02233-WYD-MEH Document 31 filed

02/12/09 USDC Colorado Page 2 of 10

(3 cont) lacks subject matter jurisdiction, the court must dismiss the action." As set forth herin, the court indeed lacks subject matter jurisdiction over this claim as a matter of law, and plaintiffs Amended Complaint should be dismissed with prejudice.

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 3 of 10

II. Standard of Review

A. Dismissal under Fed. R. Civ P. 12(b) (1)

Fed. R. Civ. P. 12 (b) (1) empowers the court to dis miss a complaint for "lack of jurisdiction" over the subject." Dismissal under Rule 12 (b) (1) is not a judgement on the merits of a plaintiff's case, but only a determination that the court lacks authori ty to adjudicate the matter. *See Castaneda* v. *INS*, 23 F.3d 12576, 1580 (10th Cir. 1994) (recognizing federal courts are courts of limited jurisdiction and may only excerise jurisdiction when specifically au thorized to do so). A court lacking jurisdiction" must dismiss the cause at any stage of the proceedi ng in which it becomes apparent that jurisdiction is lacking."

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 3 of 10

Basso v. *Utah Power & Light Co.*, 495 F. 2d 906, 909 (10th Cir. 1974). A Rule 12(b) (1) motion to dismiss " must be determined from the allegation of fact in the complaint, without regard to mere con clusory allegation of jurisdiction." *Groundhog* v. *Keeler*, 442 F.2d 674, 677 (10th Cir. 1971).

In a lawsuit against the United States or an agency of the United States, the United States must waive its sovereign immunity and consent to suit in order for a court to excerise subject matter jurisdic tion over the case. *See. e.g. U.S.* v. *Mitchell*, 463 U.S. 206. 212 (1983); *Lonsdale* v. *U.S.*, 919 F.2d 1440, 1442-44 (10th Cir. 1990). The burden of es tablishing that the United States waived sovereign immunity regarding regarding the claims in this

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 3 of 10

matter in order for the court to exercise Subject matter Jurisdiction.

B. ***Dismissal under Fed. R. Civ. P. 12 (b) (2) and (5)***

Fed R. Civ P. 12 (b) (2) dictates a case may be dismissed for lack of personal jurisdiction. "before a federal court may exercise personal jurisdiction over a defendant, the procedural

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 4 of 10

requirements of service of summons must be satis fied." *Omni Capital Int'l Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987) Insufficient service of proc ess provides a basis for dismissal of a case under Fed. R. Civ. P. 12 (b) (5).

Fed. R. Civ. 4 (i) governs service of process upon the United States and upon an officer, agency, or corporation of the United States. To serve the United States properly according to Fed. R. Civ. P. 4 (i) (1), a party must:

(A) (i) deliver a copy of the summons and of the c complaint to the United States Attorney for the dis trict where the action is brought– or to an assistan tUnited States attorney or clerical employee whom the United States designates in a writing filed with

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 4 of 10

the court clerk—or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney office;

(B) send a copy of registered or certified mail to the Attorney General of the United States at Wash ington D.C.; and

(C) if the action challenges an order of a non-party agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

The plaintiff bears the burden of establishing proper service of process. *Lasky* v. *Lansford*, 76 F. App'x 240, at 240, at *241 (10th Cir, 2003) (citation omitted). A *pro se* litigant is still obligated to follow

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 4 of 10

the requirements of Fed. R. Civ. P. 4." *DiCesare V. Stuart,* 12 F.3d 973. 980 (10th Cir. 1993)

C. Dismissal under Fed R. Civ. P. 12 (b) (6)

When deciding a motion to dismiss under Fed. R. Civ. P. 12 (b) (6), the Court must accept all of the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff. *Erikson* v. *Pardus,* 551 U.S. 89. 127 S. Ct. 2197, 2200 (2007); *Bell Atlantic Corp.* v. *Twomby,* 550 U.S. 544, 544, 127 S. Ct. 1955, 1968-69 (2007). Courts should look to the specific allega tions of the complaint to determine whether they plausibly support claim for relief—that is— a com plaint must include "enough facts to state a claim

Case: 1 08-cv-02233-WYD-MEH Document 31 filed

02/12/09 USDC Colorado Page 4 of 10

for relief that is plausible.

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 5 of 10

on its face." *Ton* Services, *Inc* v. Qwest Corp., 493 F.3d 1225, 1236 (10th Cir. 2007); *Alvarado* v. *KOB-TV, LLC,* 493 F.3d 1210, 1215 (10 the Cir. 2007). The complaint must sufficiently allege facts sup porting all of the elements necessary to establish an entitlement to relief under the legal theory pro Posed. *Lane* v. *Simon* 2007 WL 2136579, *3 (10th Cir. July 26 2007). As the tenth circuit explained "the mere metaphysical possibility that *some* plain tiff could prove *some* set of facts in support of the pleaded claims is insufficient; the complaint must give the court reason to believe that *this* plaintiff has a reasonable likelihood of mustering factual support for *these* claims." *Ridge at Red Hawk, LLC* v. *Schneider* 493 F.3d 1170, 1177-74 (10th Cir 2007)

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 5 of 10

(emphasis in original).

D. Dismissal of a Pro Se plaintiff Complaint

A federal court must construe a *pro se* plaintiff's ' pleadings liberally, applying a less stringent than is applicable to pleadings filed by lawyers [The] court, however will not supply additional factual al legations to round out a plaintiff's complaint or con struct a legal theory on plaintiff's behalf." *Whitney* v. *New Mexico* 113 F.3d 1170,1173-74 (10th Cir. 1997)(quotations and citations omitted). The Tenth Circuit interpeted this rule to mean "if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so Despite the plaintiff's failure to cite proper legal

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 5 of 10

authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements. '*Hall* v. *Bellman* 935 FR.2d 1106, 1110 (10th Cir. 1991). However, the Tenth circuit qualifies this interpreta tion in that it is not "the proper function of the dis trict to assume the role of advocate for the *pro se litigant*." *Id.*

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 6 of 10

III. Analysis

In their Amended Complaint, Plaintiffs con tinue to erroneously rely on a Second Circuit case as a primary case of authority for alleging waiver of immunity, *Schulz* v.*Internal Revenue Service*, 395 F.3d 463 (2.d Cir. 2005), which is in fact inapplica ble in this matter. (4) (Docket # 37 at 12-14.) Plain tiffs would do better to adhere to the Tenth Circuits decision in *Lonsdale* , which provides on point bind ing legal precedent for this for this Court's recom mendation to grant defendant's motion (5) *See Lonsdale* , 919 F.2d at 1440.

Similar to Lonsdale, Plaintiff's Complaint " is essen tially an attempt to prevent the collection of as sessed taxes by challenging the underlying

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 6 of 10

tax assessments." *Id* at 1442. The *Lonsdale* plaintiffs characterized their claim as a quiet action title In order to circumvent the 'Pay first, litigate later' rule of federal tax collection. *Id* at 1442. Here, Plaintiffs make no such ruse, but instead challenge the underlying tax assessment, in this case way to the two liens, by asserting their "status" as "natural' persons somehow excuses them from federal tax liability. (Docket #37 at 8,

---

(4) In *Schulz*, the second circuit held that a taxpayer seeking to quash administrative summonses Served upon him by the IRS lacked standing to challenge the 'mere issuance' of such summonses because the IRS had not commenced enforcement of the summonses. 395 F.3d at 464. In this case, Plaintiffs, do not challenge a summons and a summons has not been issued, but instead seek the court to prevent the IRS from enforcing a levy

against plaintiff Diane Bankston for unpaid federal taxes. However, like *Schulz*, Plaintiff Chris Bankston indeed lacks standing to bring the claims at hand.

(5) The Court refers to Plaintiffs to the listing of twelve arguments popular with persons seeking to challenge the assessment against them of federal tax and designated as "completely lacking in legal merit and patently frivolous" in *Lonsdale*. 919 F.2d at 1448. Notably, the *Lonsdale* Court includes the claim that 'individuals (freeborn, white, preamble, sovereign natural, common law 'dejure' citizen of a state etc.') are not person subject to taxationunder the Internal Revenue code" in this list of meritless assertions, which is precisely the declaration fronted by Plaintiffs as the basis for their action,

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 7 of 10

10-12.)

As previously described, Plaintiffs assert the court's jurisdiction pursuant to the First, Fourth, Fifth, Seventh, Thirteenth, and Fourteenth amend ments of the United States Constitution, 42 U.S.C. § 1983 and 28 U.S.C. § 1356 (*Id at 9.)* Plaintiffs fail on each asserted jurisdictional basis. First, 42 U.S.C. § 1983 allows suit against a natural person acting under color of state law. The Internal Reve nue Service is neither a natural person nor an arm of a state, as it is an entity of the federal govern ment; the same analysis as it is an entity of the fed eral government, the same analysis applies to the defendant United States. Second, the IRS (and of course the United States) is a federal entity,

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 7 of 10

precluding application of the Fourteenth Amendent which applies to the states. Third Plaintiff no con stitutional, statutory or case law basis for the requi site "unequivocally expressed' waiver of the United States sovereign immunity for their claim. *U.S.* v. *Mitchell*, 445 U.S 535, 538 (1980) (citation omitted) Fourth, 28 U.S.C. § 1356 does not establish federal court jurisdiction over challenging the federal gov ernment's authority to proceed by levy to collect fed eral tax, as Plaintiff's attempt to do here. *E.g.*, *Swanson* v. U.S., No. 00-781, 2002 WL 31236128, a at *3 (Fed. Cl. 2002) (determining 28 U.S.C. § 1356 could not provide a basis for challenging "improper lien and/ levy placement") *Knies* v. C.I.R., No. 90-3393, 1992 WL 4222, at *3, n.6 (7th Cir. 1992)

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 7 of 10

(describing 28 U.S.C. § 1356 as a general authority to levy on property of a deficient taxpayer) *see also Lonsdale*, 919 F.2d at 1444 (Soverign Immunity is not waived by general jurisdictional statutes.....")

The only possibly legitimate foundation per ceived by the Court might be Fifth Amendment due process, allowing relief for an unjustified taking via levy. However, Fifth Amendment due process in the context of federal tax requires only that a tax payer enjoy the right

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 8 of 10

to bring suit for a refund if a tax had been collected unlawfully *See Lister* v. *U.S,* 77 F. App'x 465, 466 (10th Cir. 2003). As Plaintiffs bring their claims be fore any actual seizure of the assets at issue here, Plaintiffs fail to properly implicate due process.

Furthermore even by consulting Plaintiff's plead ings liberally and assuming Plaintiff's pleadings and assuming Plaintiff's contention that they lack liability for the taxes due as assessed by the IRS is Correct, this action is barred by the Anti-Injunction Act, 26 U.S.C. § 7421. The Anti– Injunction act generally prohibits restraining the IRS in its collec tion of taxes , absent an exception. In sum plaintiffs fail to establish the required explicit waiver of sov ereign immunity necessary to bring suit against

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 8 of 10

the United States before any actual seizure of prop erty intended to satisfy unpaid assessed federal tax liability, therefore the court recommends defen dant's motion to dismiss be granted pursuant to Fed R. Civ. P. 12 (b) (1) and (6).

B. Lack of personal jurisdiction and Insuf-ficient Service

Before a federal court may excerise personal ju risdiction over a defendant, the proceduralrequire ments of service of summons must be satisfied." *Omni Capital Int'l Ltd v. Rudolf Wolff & Co,* 484 U.s. 97 104 (1987), Federal Rule of Civil procedure despite4, governing service of process, still binds plaintiff despite that they proceed in this matter *pro se.* To serve the United States properly

APPENDIX

(cont.)

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 8 of 10

according to Fed. R. Civ P. 4 (i) (1), a party must de liver a copy of the summons and of the complaint to the United States attorney for the district where the Action is brought" and "send a copy of each by regis tered or certified mail to the Attorney General of the United States at Washington D.C." The govern ment represents to the court that plaintiffs properly served the local United States Attorney but has not served the Attorney General iof the United States. (Docket # 38 at 9.) The government further sets forth, "the United States has not and does not waive its right to proper

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 9 of 10

service." (*Id*) Although this deficiency is curable, Plaintiffs' case has proceeded four months with Plaintiffs' satisfaction of their burden to fulfill this requirement. Therefore, the Court recommends defendant's motion to dismiss be granted pursuant to Fed. R. Civ. P. 12 (b) (2) and (5).

C. Lack of standing

Standing is a necessary component of the Article III case or controversy requirement. *Habecker* v. *Town of Estes Park, Colo.* 518 F.3d 1217, 1223 (10th Circuit 2008). The requirement that a party have standing "serves to ensure that the plaintiff is a proper party to invoke judicial resolution of the dis pute." *Id.* (quoting *Warth* v. *Seldin,* 422U.S. 490, 518 (1975).

Plaintiffs describe how the Notices of Levy in this matter were issued against Plaintiff Diane R. Bankston, not against Plaintiff Chris E. Bankston. (Docket #37 at 8.) As stated Mr. and Mrs. Bankston are proceeding *pro se* representing their own respect tive interests. Mr. Bankston, as a non lawyer may not represent the interests of Mrs. Bankston, de spite plaintiff' submission of a document titled "Designation of Case Representitive." (Docket # 11.) The proper party in interest is Mrs. Bankston, and Plantiff Chris Bankston should be dismissed from the case for lack of standing.

IV. Conclusion

Plaintiff believe that their "status as a domi ciled natural person and one of the people" excuses

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 9 of 10

Mrs. Bankston from the tax jurisdiction of the United States, yet simultaneously allows them to bring the claims at hand, thereby creating a strange juxtaposition in this matter. Plaintiffs seek the court to legitimize their attempt to evade paying the assessed taxes due to the federal government, and at the same time, they avail themselves onto the federal court for lawful protection, when the court itself as well as the Legislature that creates the laws binding that Court exist, at least

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 10 of 10

in part, by virtue of federal tax. In any event, Plaintiffs' dispute with taxes is of a political nature and not legal. For these and all the reasons stated herein, the Court recommends Defendant's Motion to dismiss be granted pursuant to Fed R. Civ P. 12 (b) (1), (2), (5) and (6), and for lack of standing in regards to Plaintiff Chris Bankston. The court fur ther recommends Plaintiffs' Amended Complaint be dismissed with prejudice pursuant to Fed. R. Civ. P. 12 (h) (3).

Accordingly, it is hereby RECOMMENDED that the United States' Motion to Dismiss Pursuant to Rule 12 (b) (1), (2), (5) and (6) [filed February 11, 2009; docket # 38} be **GRANTED.**

Case: 1 08-cv-02233-WYD-MEH Document 31 filed 02/12/09 USDC Colorado Page 10 of 10

Dated at Denver, Colorado, this 12th day of Febru ary, 2009.

BY THE COURT:

s/ Michael E. Hegarty
Michael E. Hegarty
United States Magistrate Judge

Case: 1 08-cv-02233-WYD-MEH Document 46 filed

05/19/09 USDC Colorado Page 1 of 8

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil action No. 08-cv-02233-WYD-MEH

CHRIS E. BANKSTON; and
DIANE R. BANKSTON

Plaintiffs,

v.

INTERNAL REVENUE SERVICE,

Defendant

ORDER AFFIRMING AND ADOPTING RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

This matter is before the court on Plaintiffs' Mot tion for Temporary Restraining order ["TRO"] filed October 23, 2008, the United States' Motion

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 1 of 8

to Dismiss Pursuant to Rule 12 (b) (1), (2) (5) and (6) filed February 11, 2009. These motion were re ferred to Magistrate Judge Hegarty for a recommen dation by order of Reference of October 24, 2008, and Mermoranda of October 24, 2008November 24, 2008, and February 11, 2009 I first address the mo tion for TRO.

A. Motion for Temporary Restraining Order

Magistrate Judge Hegarty held a hearing on Plaintiff's Motion for TRO on October 24, 2008, and issued a Recommendation that same day. It is rec ommended therin that plaintiff's motion for TRO be denied. The Recommendation is incorporated herein by reference. *See* 28 U.S.C. §636 (b) (1), Fed. R. Civ. P. 72 (b),

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 2 of 8

D.C. COLO. LCivR. 72.1 On November 7, 2008, Plaintiffs filed timely objections to the recommenda tion. A response was filed to the objections on No vember 14, 2009.

As the Recommendation notes, Plaintiff's Motion for TRO requests that the Court enjoin the IRS from excerising an October 21, 2008 levy allegedly pur posed to sieze money from the Plaintiffs. (Recommendation of October 24, 2008, at 2.) At the hearing, Plaintiff Chris Bankston argued that the income tax debt underlyingthis action is Mrs. Bank ston's (Diane Bankston) , and that the levy that the IRS was making was against the money allegedly belonging to Mrs. Bankston. (*Id.*) Diane Bankston did not appear at the hearing. (*id*)

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 2 of 8

Magistrate Judge Hegarty found that the motion for TRO should be denied on three grounds. (*Id*) First, he found that plaintiffs failed to assert valid subject matter jurisdiction in this matter. (*Id* 2-3.) Second, he found that the real party in interest, Diane Bankston failed to attend the hearing to as sert her rights or to make any allegation of wrong doing meriting emergency injunctive relief. Accord ingly, Magistrate Judge Hegarty found that the that the court lacked any factual basis to issue injunctive relief. Third, he found that even if the court had a basis to analyze the case. Plaintiffs failed to demon strate a substantial likelihood of prevailing on the merits of the case or irrepairable harm. (*Id*. At 2, 4-6)

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 2 of 8

Plaintiffs object to the recommendation, assert ing that they did establish valid subject matter ju risdiction. They cite to, among other things, the due process clause and various amendments to the United States Constitution. Further they assert that there is a substantial likelihood of success on the merits, citing *Schulz* v. *IRS*, 395 F.3d

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 3 of 8

463 (2nd Cir, 2005) and *Schulz* v. *IRS*, 413 F.3d 297 (2d Cir 2005). They further argue that Diane Bankston is not identified by 26 U.S.C. as a person whom levy can be made, that the levies were out the scope of the IRS' authority and that the Anti-Injunction Act is inapplicable. As to the Recom mendation's finding that the Motion for the TRO should be denied because Diane Bankston as the real party in interest failed to attend the hearing to assert her right, Plantiffs assert that she could not be present at the hearing and that she has since designated Chris Bankston as her representative for this action.

Turning to my analysis, Plaintiff's objections ne cessitate a de novo determination as to those

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 3 of 8

specified proposed findings or recommendations to which objection is made since the motion at issue seeks injunctive relief and is therefore dispositive. 28 U.S.C. § 636 (b) (1). For the reasons stated be low, I affirm and adopt the Recommendation on Plaintiff's motion for Temporary Restraining Order.

First, I find that Plantiffs have not established that the Court has subject matter jurisdiction over this suit. While Plantiffs argue that the Anti-Injunction Act 26 U.S.C. § 7421, is inapplicable, I Disagree. The act restricts the filing of any person in any court to restrain the assessment or collection of any tax. *Id.* Plaintiffs have not shown that any Exceptions to the Act are applicable. Further, they have failed to show even a limited waiver of the

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 3 of 8

United States' sovereign immunity in connection with the claims at issue in this case.

The Schulz cases are inapplicable, as they dealt with summons power of the IRS under specifically applicable to summons. No summons is at issue in this

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 4 of 8

case. Further, the constitutional claims cannot be brought unless there is a waiver to sovereign immu nity, has not been shown. As the recommendation and the response to the objections also note, Plain tiffs cannot pursue a claim under 42 U.S.C. § 1983, the Fair debt Collection Practices Act, or any other authority relied on by plaintiffs. For the same rea sons, I agree with the recommendation that plain tiffs cannot show a likelihood of success on the mer its.

Further, it is undisputed that the levies are di rected against Diane Bankston. Accordingly she is the real party in interest and she failed to appear at the TRO hearing to assert her rights or make alle gations of wrongdoing. Thus, Magistrate Judge

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 4 of 8

Hegarty was correct in finding that the TRO motion should have also been denied on this basis. The fact that after the hearing. That after the hearing Plaintiff Diane Bankston purported to make Chris Bankston her representative does not remedy her failure to appear at the hearing to show that a TRO should be granted. Further, as Magistrate Judge Hegarty correctly noted, Chris Bankston cannot be Diane Bankston's representative since he is not an attorney, Diane Bankston has not been shown to be incompetent to represent her own interests, and Chris Bankston has no lawfully issued authority to represent the interests of Diane Bankston.

B. Recommendation on Motions to Dismiss

Turning to the motions to dismiss, the original

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 4 of 8

motion was filed on November 24, 2008, a response was filed on December 23, 2008, and a reply was filed on December 31, 2008 Magistrate Judge Hegarty issued a recommendation on the United States'

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 5 of 8

Motion to Dismiss Pursuant to Rule 12 (b) (1), (2), (5) and (6) on January 14, 2009 recommending that the motion to dismiss be granted.

Thereafter, on February 6, 2009, Plaintiffs ten dered an Amended Complaint. The United States filed a second motion to dismiss on February 11, 2009, Magistrate Judge Hegarty issued a recom mendation on February 12, 2009. Again Magistrate Judge Hegarty recommended that the motion to dis miss be granted. An objection was filed by Plain tiffs on March 2, 2009, and a response to the object tions was filed on March 10, 2009. The recommend dations are incorporated herein by reference.

I first find that the Recommendation on the United States' original motion to dismiss filed

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 5 of 8

January 14, 2009 appears to be mootin light of the fact that the United States filed a second motion to dismiss that addresses the amended complaint. Ac cordingly, I focus on the Recommendation of Febru ary 12, 2009. Since the Recommendations are essen tial identical, however, my analysis applies to both Recommendations.

In the Recommendation of February 12, 2009, Magistrate Judge Hegarty recommends that the United States' motion to to dismiss be granted. First he states that plaintiffs' complaint is essen tially an attempt to prevent the collection of as sessed taxes by challenging the underlying tax as sessments." (Recommendation at 6) (quoting *Lons dale* v. *United States,* 919 F.2d 1440, 1442-44

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 5 of 8

(10th Cir. 1990) Further, he finds that ZPlaintiffs fail on each jurisdictional basis asserted, including 42 U.S.C. § 1983 as the IRS is not a natural person or an arm of the state. *Id. At* 6-8 Moreover, he finds that the action is barred by the Anti-Injunction Act, 26 U.S.C. § 7421, which prohibits

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 6 of 8

Restraining the IRS in its collection of taxes (*Id.* At 8.) The recommendation thus concludes that the motion to dismiss should be granted pursuant to Rules 12 (b) (1) and (6) as plaintiffs failed to estab lish the required explicit waiver of sovereign immu nity necessary to bring suit against the United States. (*Id.*)

The recommendation also finds that the motion should be granted pursuant to Rules 12 (b) (2) and (5) based on a lack of personal jurisdiction, as Plain tiffs failed to properly serve the United States and their case proceeded four months without Plaintiffs' satisfaction of their burden to satisfy this require ment of their burden to fulfill this requirement. (Recommendation at 8-9.)

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 6 of 8

Further the Recommendation finds that the motion to dismiss should be granted as to Chris Bankston as to due to lack of standing, as the levies were is sued against Diane Bankston, the real party in in terest *Id.* Finally Magistrate Judge Hegarty finds that Plaintiff's "status" as "natural" persons does not excuse them from federal tax liability. (*Id* at 9-10.)

Plaintiffs' objection asserts that the court has subject matter jurisdiction, relying on the previ ously cited *Schulz* cases and other authority. They also argue that Congress gave up sovereign immu nity for the United States on federal law violations when it passed 42 U.S.C. § 1983 into law, and that the IRS forfeited sovereign immunity when it acted

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 6 of 8

outside the scope of its authority. They assert that *Lonsdale* and 26 U.S.C. § 7241 are inapplicable be cause plaintiffs hold status as non-taxpayers. Spe cifically, it is argued that their status is "one of the people" and a Domiciled Natural Person' and that they are neither a citizen or resident of the United States. Finally, Plaintiffs assert that the recom mendation to dismiss the case for

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 7 of 8

lack of personal jurisdiction due to lack of service is moot because they have filed original certified re turn reciepts from the Attorney General, and that Chris Bankston is a party of interest and has stand ing in this suit.

Plaintiffs' objections necessitate a de novo deter mination as to those specified proposed findings or recommendations to which objection is made since the Recommendations concern motions to dismiss which are dispositive in nature. 28 U.S.C. § 636 (b) (1); Fed. R. Civ. P. 72 (b).

I agree with the recommendation and find that the United States' notion to dismiss should be granted on the basis that the court lacks subject matter jurisdiction over the case. As the United

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 7 of 8

States notes in its response ti plaintiffs' objections, it is Plantiff's burden to establish that the United States has waived sovereign immunity for this type of case. Plaintiffs have failed to do so, as they failed to cite any statute or authority which provides even a limited waiver of sovereign immunity.

Further, Plaintiffs have failed to show that the Anti-injunction Act is inapplicable or that an excep tion applies. As noted previously, the act prohibits suits for the purpose of restraining the assessment or collection of any tax." 26 U.S.C § 7421. In this Casethe claims fall squarely within that prohibition as Plaintiffs seek to 'enjoin the [United States] to immediately cease and desist in the taking of money based on the Notice of Levy on Wages."

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 7 of 8

(Am. Comp. at 9.) The cases, statutory authority and Constitutional amendments relied on by Plain tiffs are inapposite, as explained previously in this Order and in the Recommendation and the United States' response to Plaintiffs' objections. Finally ,1 agree with the Recommendation that Plaintiffs' theories that they

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 8 of 8

are not "taxpayers" due to their status as "one of the people and a Domiciled Natural person" is with out merit. *See, e.g. Lonsdale* v. *United States*, 919 F.2d 1440, (10th Cir. 1990); *Prout* v. *Commisioner*, No. 01-9005, 2002 WL 437980, *1-2 (10th Cir. 2002)

Based upon the foregoing, it is

ORDERED that the Recommendation on Plaintiffs' Motion for Temporary Restraining Order (Doc. 9 filed October 24, 2008) is **AFFFIRMED AND ADOPTED.** In accordance therewith, it is

ORDERED that the Plaintiffs' Motion for Temporary Restraining Order (Doc. #3 filed October 23, 2008) is **DENIED.** It is

FURTHER ORDERED that the recommendation on the United States' Motion to Dismiss Pursuant

Case: 1 08-cv-02233-WYD-MEH Document 46 filed 05/19/09 USDC Colorado Page 8 of 8

to Rule 12 (b) (1), (2) (5) and (6) (Doc. # 28 filed January 14, 2009) and the Recommendation on the United States Motion to Dismiss Pursuant to Rule 12 (b) (1), (2) (5) and (6) (Doc. February 12, 2009) are **AFFIRMED AND ADOPTED**. In accordance therewith, it is

ORDERED that the United States' motions to dismiss Pursuant to Rule 12 (b) (1), (2), (5) and (6) (Doc. # 14 filed November 24, 2008 and the United States' Motion to dismiss Pursuant to Rule 12 (b) (1), (2), (5) and (6) (Doc. # 38 filed February 11, 2009) are **GRANTED,** and this case is **DIS MISSED WITH PREJUDICE.**

Case: 1 08-cv-02233-WYD-MEH Document 46 filed

05/19/09 USDC Colorado Page 8 of 8

Dated: May 19, 2009

BY THE COURT

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge

APPENDIX
(cont.)

Case: 1 08-cv-02233-WYD-MEH Document 47 filed

05/20/09 USDC Colorado Page 1 of 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 08-cv-02233-WYD-MEH

CHRIS E. BANKSTON; and
DIANE R. BANKSTON

Plaintiffs

v.

INTERNAL REVENUE SERVICE,

Defendant.

JUDGEMENT

Pursuant to and in accordance with the Order Affirming and Adopting Recommendations of United States Magistrate Judge, Filed on May 19, 2009, by the Honorable Wiley Y. Daniel, Chief

Case: 1 08-cv-02233-WYD-MEH Document 47 filed 05/20/09 USDC Colorado Page 1 of 2

United States District Judge, and incorporated herein by reference as if full set forth it is

ORDERED that the Reccommendation of the United States Magistrate Judge [doc. #41], filed February 12, 2009, is affirmed and adopted. It is further

ORDERED that the United State' Motion to dis miss Pursuant to Rule 12 (b) (1), (2) (5) and (6) (Doc. # 14 filed November, 2008) and the United States' Motion to Dismiss Pursuant to Rule 12 (b) (1), (2), (5) and (6) (Doc. #38 filed February,11 2009) are GRANTED. It is further

ORDERED that judgement is hereby entered in favor of Defendant, Internal Revenue Service and against Plaintiffs Chris E. Bankston and

Case: 1 08-cv-02233-WYD-MEH Document 47 filed

05/20/09 USDC Colorado Page 1 of 2

Diane R. Bankston. It is further

Case: 1 08-cv-02233-WYD-MEH Document 47 filed 05/20/09 USDC Colorado Page 2 of 2

ORDERED that Plaintiff's complaint and action are dismissed with prejudice.

DATED at Denver, Colorado this 20th day of May 2009.

FOR THE COURT:

GREGORY C. LANGHAM

s/ Edward P. Butler
Edward P. Butler
Deputy Clerk

APPENDIX
(cont.)

First Amendment to the Constitution of the United States of America:

Congress shall make no law respecting an establish ment of religion, or prohibiting the free excerise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assem ble, and to petition the Government for a redress of grievances.

Fourth Amendment to the Constitution of the United States of America:

The right of the people to be secure in their persons houses and papers, and effects against unreason able searches and seizures, shall not be violated and Warrants shall issue, but upon probable case, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

APPENDIX
(cont.)

Fifth Amendment to the Constitution of the United States of America:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment Or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia When in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty or property without due process of law; nor shall private property be taken for public use with out just compensation.

Seventh Amendment to the Constitution of the United States of America:

In suits at common law, where the value in contro versy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury shall be other re-examined in any Court of the United States, than according to the rules of com mon law.

Fourteenth Amendment to the Constitution of the United States § 1 and § 5:

§ 1 All persons born or naturalized in the United States, and subject to he jurisdiction thereof, are citizens of the United States, and of the state wherin they reside. No state shall make or enforce any law which shall abridge the privileges or immu nites of citizens of he United States; nor shall any State deprive any person of life, liberty; or property without the due process of law; nor deny to any

person within its jurisdiction the equal protection of he laws. § 5 The Congress shall have power to enforce, by appropiate legislation, the provisions of this article.

U.S.C. 42, § 1983. Civil action for deprivation of Rights:

"Every person who, under color of statute, ordi nance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen or other person within the jurisdiction thereof to the depri- vation of any rights, privileges, or immunities scured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in eq uity, or other proceedings for redress, except that in any action brought against a judicial officer for an

act or omission taken in such officer's judicial capac ity, injunctive relief shall not be granted unless a de claratory decree was violated or declaratory relief was unavailable. For the purposes of this section any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a stat ute of the District of Columbia.

U.S.C. 28 § 1356; Seizures not within admiralty and maritime jurisdiction:

"The districts courts shall have original jurisdiction exclusive of the courts of the states, of any seizure under any law of the United States on land or upon waters not within the admiralty and maritime juris diction, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title."

APPENDIX
(cont.)

Federal Rules of Civil Procedure: Rule # 1

Scope and Purpose:

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be con strued and administered to secure the just and inex pensive determination of every action and proceed ing.

Colorado Revised Statutes 18 - 5 - 110 Criminal Simulation.

(1) A person commits a criminal simulation, when: (a) with intent to defraud, he makes , alters or represents any object is such fashion that it ap pears to have antiquity, rarity, source or author ship, ingredient or composition which it does not in fact have; or

(b) With knowledge of its true character and with intent to use to defraud, he utters misrepresents, or Possess any object made or altered as specified in Paragraph (a) of this subsection (1). [Without court order a notice of levy is a violation of the the above state law. Without court order, the levy is a scheme of the IRS without authority.]

Chris E. & Diane R. Bankston
In propia persona
2395 Redwood Avenue
Lafayette, Co. 80026
(720) 257– 4194